MONTANA LEGISLATIVE HISTORY

Chapter 439 19 81

Bill H _____ S 272 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3/23	✓ C	Hearing Date(s)	2-13	✓ C
	3/28	✓ C		2-20	✓ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	_____	___ C			

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

TRANSMITTED TO HOUSE: 2/17
REFERRED TO COMMITTEE ON HUMAN SERVICES: 2/18
HEARING: 3/9
REPORT: 3/10, BE CONCURRED IN
2ND READING: 3/19, YEAS: 74; NAYS: 19
ON MOTION, 3/19, REREFERRED TO COMMITTEE ON APPROPRIATIONS.
HEARING: 3/26
REPORT: 3/26, BE CONCURRED IN, AS AMENDED
2ND READING: 3/30, AS AMENDED -- YEAS: 81; NAYS: 4
3RD READING: 3/31, YEAS: 83; NAYS: 12

RETURNED TO SENATE WITH AMENDMENTS: 3/31
2ND READING: 4/10, BE CONCURRED IN
ON MOTION, 4/11, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 4/11, YEAS: 47; NAYS: 1

TRANSMITTED TO GOVERNOR: 4/15/81
ACTION: 4/20, SIGNED
CHAPTER 438

SB 271 -- RYAN -- AMENDING 46-14-302 TO NOT REQUIRE THE DEPARTMENT OF INSTITUTIONS TO SUPERVISE PATIENTS CONDITIONALLY RELEASED FROM WARM SPRINGS.
INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/24
HEARING: 2/11
REPORT: 2/12, DO PASS
2ND READING: 2/16, YEAS: 30; NAYS: 19
3RD READING: 2/17, YEAS: 33; NAYS: 17

TRANSMITTED TO HOUSE: 2/17
REFERRED TO COMMITTEE ON HUMAN SERVICES: 2/18
HEARING: 3/9
REPORT: BE CONCURRED IN AS AMENDED, 3/10
2ND READING: 3/19 YEAS: 30; NAYS: 63
BE NOT CONCURRED IN MOTION, 3/19, YEAS: 76; NAYS: 20
BILL KILLED ON 2ND READING: 3/19

SB 272 -- MAZUREK, TURNAGE, S. BROWN, ET AL -- GENERALLY REVISING THE PROCEDURES FOR THE ISSUANCE OF A WARRANT FOR DISTRAINT BY THE DEPARTMENT OF REVENUE.
FISCAL NOTE: REQUIRED
INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/24
HEARING: 2/13
REPORT: 2/20, DO PASS AS AMENDED
2ND READING: 2/23, DO PASS AS AMENDED
3RD READING: 2/25, YEAS: 46; NAYS: 2

TRANSMITTED TO HOUSE: 2/25
REFERRED TO COMMITTEE ON JUDICIARY: 3/2
HEARING: 3/23
REPORT: 3/28, BE CONCURRED IN, AS AMENDED
2ND READING: 3/31, AS AMENDED -- YEAS: 53; NAYS: 31
ON MOTION, 3/31, RULES SUSPENDED AND PLACED ON 2ND READING
3RD READING: 3/31, YEAS: 65; NAYS: 29

RETURNED TO SENATE WITH AMENDMENTS: 3/31
2ND READING: 4/10, BE CONCURRED IN
ON MOTION, 4/11, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 4/11, YEAS: 48; NAYS:

TRANSMITTED TO GOVERNOR: 4/15/81
ACTION: 4/20, SIGNED
CHAPTER 439

SB 273 -- HAZELBAKER, TURNAGE, STORY -- AMENDING 2-4-412 TO ALLOW ADMINISTRATIVE CODE COMMITTEE TO SUSPEND AGENCY RULES.
INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/26
HEARING: 2/12
REPORT: 2/18, DO PASS AS AMENDED
2ND READING: 2/20, YEAS: 33; NAYS: 12
3RD READING: 2/24, YEAS: 36; NAYS: 14

TRANSMITTED TO HOUSE: 2/24
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 3/2
HEARING: 3/18
REPORT: BE CONCURRED IN, 3/19
2ND READING: 3/26 YEAS: 53; NAYS: 41
3RD READING: 3/28 YEAS: 54; NAYS: 41

RETURNED TO SENATE: 3/28

TRANSMITTED TO GOVERNOR: 4/3
ACTION: 4/9, VETOED

SB 274 -- ECK, HAZELBAKER -- AMENDING 2-15-124 TO INCREASE THE DAI HONORARIUM OF QUASI-JUDICIAL BOARD MEMBERS.
FISCAL NOTE: REQUIRED
INTRODUCED AND REFERRED TO COMMITTEE ON STA ADMINISTRATION: 1/26
HEARING: 2/2
REPORT: 2/4, DO PASS AS AMENDED
2ND READING: 2/7, YEAS: 32; NAYS: 14
3RD READING: 2/10, YEAS: 35; NAYS: 9

TRANSMITTED TO HOUSE: 2/10
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 2/11
HEARING: 3/5
REPORT: 3/5, BE NOT CONCURRED IN
REPORT ADOPTED: 3/6
BILL KILLED: 3/6 YEAS: 83; NAYS: 14

SB 275 -- RYAN -- AMENDING 33-18-201 TO PROHIBIT A LIFE INSURER CONTRACTING TO NAME A FUNERAL DIRECTOR...
INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 1/26
HEARING: 2/4
REPORT: 2/9, DO PASS AS AMENDED
2ND READING: 2/11, DO PASS
3RD READING: 2/13, YEAS: 47; NAYS: 3

TRANSMITTED TO HOUSE: 2/13
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 2/14
HEARING: 3/10
REPORT: 3/10, BE CONCURRED IN
2ND READING: 3/20, YEAS: 83; NAYS: 0
3RD READING: 3/23, YEAS: 97; NAYS: 1

RETURNED TO SENATE: 3/23

SENATE BILL NO. 272

INTRODUCED BY MAZUREK, TURNAGE,
S. BROWN, M. ANDERSON

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE SENATE

January 24, 1981	Introduced and referred to Committee on Judiciary.
	Fiscal note requested.
January 31, 1981	Fiscal note returned.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading, do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 46; Noes, 2. Transmitted to House.

IN THE HOUSE

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 28, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.

March 31, 1981	Second reading, concurred in as amended.
	On motion rules suspended and bill placed on third reading this day.
	Third reading, concurred in as amended. Ayes, 65; Noes, 29.

IN THE SENATE

April 1, 1981	Returned from House with amendments.
April 4, 1981	On motion, consideration be passed for the day.
April 10, 1981	Second reading, amendments concurred in.
April 11, 1981	Third reading, amendments concurred in. Ayes, 48; Noes, 0. Sent to enrolling.
	Reported correctly enrolled.

LC 0327/01

Senate BILL NO. 272

INTRODUCED BY Marguerite Turnage Steve Brown

BY REQUEST OF THE DEPARTMENT OF REVENUE

Mike Anderson

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE, CLARIFY, AND UNIFY THE PROCEDURES FOR THE ISSUANCE OF A WARRANT FOR DISTRAINT BY THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-30-208, 15-30-226, 15-30-311, 15-30-312, 15-31-406, 15-31-525, 15-35-105, 15-36-107, 15-36-108, 15-37-107, 15-37-206, 15-38-107, 15-38-108, 15-51-111, 15-51-112, 15-53-112, 15-53-113, 15-54-112, 15-54-113, 15-55-109, 15-56-112, 15-56-113, 15-58-106, 15-58-107, 15-59-106, 15-59-107, 15-59-205, 15-59-206, 15-70-211, 15-70-334, 16-1-409, 40-5-222 through 40-5-226, 40-5-241, 40-5-245, 40-5-246, 40-5-255, 40-5-256, 69-1-226, AND 69-1-227, MCA; AND REPEALING SECTIONS 15-30-315 AND 15-31-527, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Warrant for distraint: (1) A warrant for distraint is an order, under the official seal of the department of revenue, directed to a sheriff of any county of Montana or to any agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing the warrant as provided in [section 4], there is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced.

(3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant.

NEW SECTION. Section 2. Issuance of warrant. (1) If a tax, other than inheritance or estate tax, administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer notifying him that unless payment is received within 30 days of the date of the notice, a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under [section 3] if the department determines that it is appropriate to utilize [section 3].

INTRODUCED BILL

SB 272

NEW SECTION. Section 3. Emergency issuance of warrant. (1) The department may issue a warrant for distraint without waiting for the expiration of either 30-day period provided for in [section 2] if:

(a) the department determines that the collection of the tax is or may be jeopardized because of the delay imposed by the waiting period; or

(b) the tax involved is a tax considered to be held in trust by the taxpayer under state law.

(2) Whenever the provisions of this section are utilized, the department must notify the taxpayer that warrants have been issued.

NEW SECTION. Section 4. Filing with district court. (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

NEW SECTION. Section 5. Hearing. (1) Except as provided in [section 7], a taxpayer has the right to request a hearing on the matter of tax liability prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to

hearing to the taxpayer. A request for a hearing must be made in writing within 30 days of the date of the notice. This notice may be given prior to the notice referred to in [section 2]. If a written request for a hearing is received, the warrant may not be executed upon until after the date the hearing is held or, if the taxpayer fails to attend a scheduled hearing, the date the hearing is scheduled.

(3) The hearing is subject to the contested case provisions of the Montana Administrative Procedure Act. Before a decision may be appealed to the district court, an appeal must first be taken to the state tax appeal board. A request for a hearing must be in writing in order to postpone execution on a warrant.

NEW SECTION. Section 6. Execution upon warrant. (1) Upon receipt of a copy of the filed warrant and notice from the department that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter by an agent authorized to collect tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant.

(3) A sheriff shall return a warrant, along with any funds collected, within 90 days of the date of the warrant.

(4) If the warrant is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment.

NEW SECTION. Section 7. Emergency execution upon warrant. (1) The department may execute upon a filed warrant for distraint without providing an opportunity for a hearing prior to execution if:

(a) the department determines that the collection of the tax is jeopardized because of the delay imposed by the hearing requirement; or

(b) the tax involved is a tax considered to be held in trust by the taxpayer under state law.

(2) When the provisions of this section are utilized, the department must notify the taxpayer and inform the taxpayer that he has a right to request a hearing to be held subsequent to execution. A hearing, if desired, must be requested in writing within 30 days of the date of the notice and, if requested, must be held as soon as possible. The commencement of a proceeding under [section 5] does not preclude the use of the provisions of this section if the department determines that such action is appropriate.

NEW SECTION. Section 8. Release of lien. (1) Upon payment in full of the unpaid tax plus penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

NEW SECTION. Section 9. Remedy not exclusive. The use of the warrant for distraint provided for in [sections 1 through 8] is not exclusive, and the department may use any other remedy provided by law for the collection of tax debts.

Section 10. Section 15-30-208, MCA, is amended to read:

"15-30-208. Withheld taxes held in trust for state -- warrants to collect. (1) Every employer who deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the same in trust for the state of Montana~~,~~ ~~and if~~

(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid ~~within 60 days after the same becomes~~ when due, the department ~~shall~~ may issue a warrant ~~under its official seal which shall have the same force and effect and shall be enforced and carried into execution in the same manner as that specified in 15-30-311~~

 SB 272

with respect to warrants relating to unpaid income taxes for distraint as provided in [sections 4 through 9]."

Section 11. Section 15-30-226, MCA, is amended to read:

"15-30-226. Amounts withheld as lien against agent priority considered in trust. In addition to the penalties provided above, if any withholding agent shall withhold any sums required to be withheld and paid over to the department under 15-30-221 through 15-30-228, the amount of the sums so withheld shall constitute a first lien against all property, real and personal, tangible and intangible, of the withholding agent, which lien shall take precedence over all others, it being the intention of 15-30-221 through 15-30-228 that the funds The amounts withheld by the withholding agent shall be under 15-30-221 through 15-30-228 are considered funds held in trust by the withholding agent."

Section 12. Section 15-30-311, MCA, is amended to read:

"15-30-311. Levy upon and sale of property Warrant for distraint. (1) If any tax imposed by this chapter, except 15-30-221 through 15-30-228, or any portion of such tax is not paid within 60 days after the same becomes when due, the department shall may issue a warrant under its official seal directed to the sheriff of any county of the state

commanding him to levy upon and sell the real and personal property of the person owing the same found within his county for the payment of the amount thereof, with the added penalties, interest, and the cost of executing the warrant and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not more than 60 days from the date of the warrant for distraint as provided in [sections 1 through 9].

(2) The sheriff shall, within 5 days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant and, in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk.

(3) The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record and shall be

~~entitled to the same fees for his services in executing the warranty to be collected in the same manner, in the discretion of the department, a warrant of like terms, force, and effect may be issued and directed to any agent authorized to collect income taxes and, in the execution thereof, such agent shall have the powers conferred by law upon sheriffs but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. In the execution of such warrants, a notice of levy issued by the department's authorized agent may be served by certified mail.~~

~~(4) If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.~~"

Section 13. Section 15-30-312, MCA, is amended to read:

"15-30-312. Jeopardy assessments. (1) If the department finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the

case of a tax for a current period, the department may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

(2) A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once, including the issuance of a warrant for distraint as provided in [sections 1 through 9]."

Section 14. Section 15-31-406, MCA, is amended to read:

"15-31-406. License tax sections incorporated by reference. The provisions of the following sections of this chapter are incorporated into this part by reference and made a part hereof:

(1) that part of 15-31-101 which defines the term "corporation" and 15-31-102, which specifies the classes of organizations whose income shall not be taxed;

(2) sections 15-31-111 through 15-31-114; 15-31-141 and 15-31-142; 15-31-301 through 15-31-313; 15-31-501 through 15-31-509; 15-31-525 ~~through 15-31-527~~ and 15-31-526; 15-31-531 and 15-31-532; and 15-31-541 through 15-31-543, except that the term "gross income" shall be construed as excluding the net amount of interest income from valid obligations of the United States and except that

wherever the words "tax", "license tax", "license fee", "corporation excise tax", or like words appear, referring to the tax imposed under part 1 of this chapter, there shall be substituted the words "income tax"."

Section 15. Section 15-31-525, MCA, is amended to read:

"15-31-525. Levy upon and sale of property. If any tax imposed by this chapter or any portion of such tax is not paid ~~within 60 days after the same becomes~~ when due, the department of revenue ~~shall~~ may issue a warrant ~~directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the corporation owning the same, found within his county, for the payment of the amount thereof with the added penalties, interest, and the cost of executing the warrant and to return such warrant to the department and pay to it the money collected by virtue thereof by a time, to be therein specified, not more than 60 days from the date of the warrant. The sheriff shall, within 5 days after the receipt of the warranty file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant and, in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is~~

~~issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the corporation against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warranty to be collected in the same manner, in the discretion of the department, a warrant of like terms, force, and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax~~ for distraint as provided in [sections 1 through 9]."

Section 16. Section 15-35-105, MCA, is amended to read:

"15-35-105. Penalty for delinquent tax. The department shall add to the amount of all delinquent severance taxes a penalty of 10% of the delinquent amount plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance tax and penalty. Interest shall be computed from the date the severance tax was due to the date of payment. The department shall mail to the person required to file a quarterly report and pay any severance tax, a letter setting forth the amount of tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made ~~within 15 days~~, a ~~lien~~ warrant for distraint may be filed ~~as set forth in 15-23-704~~. The penalty amount may be waived by the department if reasonable cause for the failure or neglect to file the quarterly statement is provided to the department."

Section 17. Section 15-36-107, MCA, is amended to read:

"15-36-107. Procedure to compute tax in absence of statement -- penalty and interest. If any such person shall fail, neglect, or refuse to file any statement required by 15-36-105 within the time therein required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the number of barrels of petroleum and other mineral or crude oil or cubic feet of gas extracted and produced by such person in

this state during such quarter and during each month thereof and the average value thereof during each such month and shall determine and fix the amount of the severance taxes due to the state from such person for such quarter and shall add to the amount of such severance taxes a penalty of 10% thereof plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance taxes and penalty. Interest shall be computed from the date the severance taxes were due to the date of payment. The department shall mail to the person required to file a quarterly statement and pay any severance tax, a letter setting forth the amount of severance tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made ~~within such time~~, a ~~lien~~ warrant for distraint may be filed ~~as set forth in 15-36-108. Upon receipt of said letter the person shall within 15 days remit to the department the full amount of severance tax, penalty, and interest due~~. The 10% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-36-105 is provided to the department."

Section 18. Section 15-36-108, MCA, is amended to read:

"15-36-108. ~~Procedure for collection of tax~~ Warrant

 SB 272

for distraint. ~~All taxy penaltyy and interest due from any person under this part shall be a lien upon any and all real property of such person when the department of revenue files in the office of the county clerk in the county where such real property is situated a certified copy of its statement of estimated tax computed under 15-36-107. This~~ If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien ~~shall have~~ has precedence over any other claim, lien, or demand thereafter filed and recorded ~~and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.~~"

Section 19. Section 15-37-107, MCA, is amended to read:

"15-37-107. ~~Lien for collection of tax~~ Warrant for distraint. ~~All taxy penaltyy and interest due from any person under this part shall be a lien upon any and all real property of such person when the department of revenue files in the office of the county clerk in the county where such real property is situated a certified copy of its statement of estimated tax computed under 15-37-106. This~~ If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien ~~shall have~~ has

precedence over any other claim, lien, or demand thereafter filed and recorded ~~and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.~~"

Section 20. Section 15-37-206, MCA, is amended to read:

"15-37-206. ~~Lien for collection~~ Collection -- warrant for distraint. (1) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made ~~within 15 days~~, a ~~lien~~ warrant for distraint may be filed. ~~Upon receipt of the letter, the person shall remit to the department within 15 days the full amount of license tax, penalty, and interest due. All taxy penaltyy and interest due from any person under this part shall be a lien upon any and all real property of such person upon the filing by the department of the duplicate tax assessment statement in the office of the county clerk in the county where such real property is situated.~~

(2) If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien has precedence over any other claim, lien, or

demand thereafter filed and recorded ~~and-may-be-enforced--in the--name--of--the--state--of--Montana-in-the-same-manner-as judgment-liens-are-enforced-at-law.~~"

Section 21. Section 15-38-107, MCA, is amended to read:

"15-38-107. Procedure in case of failure to file statement. (1) If any person fails, refuses, or neglects to make and file a statement and return it within the time prescribed, the department shall immediately after such time has expired determine, as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the tax is to be paid and shall fix the amount of the tax due to the state from such person for such calendar year and shall add to the amount of such tax a penalty of 10% thereof plus interest at the rate of 1% a month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment.

(2) The department shall mail to the person required to file an annual statement and pay any tax, a letter setting forth the amount of tax, penalty, and interest due. ~~Upon-receipt-of-this-letter,-the-person-shall-remit--to--the~~

~~department--the--full--amount--of--license-tax,-penalty,-and interest-due-within-15-days.~~ The letter shall advise that if payment is not received, a warrant for distraint may be filed.

(3) The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-38-105 is provided to the department."

Section 22. Section 15-38-108, MCA, is amended to read:

"15-38-108. ~~Lien-for-collection~~ Warrant for distraint. ~~The-tax-assessed-against--any--person--under--this--chapter, together--with--penalties--and--interest-thereon,-shall-be-a lien-upon-any-and-all-property-owned-by-such--person--within this--state,--which--lien--shall--attach--on--the--date--the department-files--in-the-office-of-the-county-clerk--in--the county--where--such-property-is-situated-a-certified-copy-of its-letter-sent-under-15-30-107(2).-This~~ If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded ~~and-may-be-enforced-in-the-name-of-the state-of-Montana-in-the-same-manner-as--judgment--liens--are enforced-by-law.~~"

SB 272

Section 23. Section 15-51-111, MCA, is amended to read:

"15-51-111. Procedure to compute tax in absence of statement. If any person fails, neglects, or refuses to file any statement required by 15-51-101 within the time therein required, the department of revenue shall, after such time has expired, proceed to inform itself as best it may regarding the number of KWH produced by such person in this state during such quarter and compute the amount of taxes due to the state from such person for such quarter and add the penalty and interest as required by 15-51-103. The department shall mail to the person required to file a quarterly report and pay such tax a letter setting forth the amount of tax, penalty, and interest due, and the letter must further contain a statement that if payment is not made ~~within such time~~, a ~~lien~~ warrant for distraint may be filed. ~~Upon receipt of the letter, the person shall remit to the department the full amount of tax, penalty, and interest within 15 days.~~ The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by 15-51-101 is provided to the department."

Section 24. Section 15-51-112, MCA, is amended to read:

"15-51-112. ~~Procedure for collection of tax~~ Warrant

for distraint. ~~All taxy penalty, and interest due from any person under this chapter is a lien upon any and all real property of such person upon the filing by the department of revenue of the duplicate tax assessment statement in the office of the county clerk in the county where such real property is situated.~~ If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded ~~and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.~~"

Section 25. Section 15-53-112, MCA, is amended to read:

"15-53-112. Estimation of tax upon failure to file statement or pay tax -- notice. (1) If a person fails, neglects, or refuses to file the statement required by 15-53-102 within the time required or fails to pay the tax required by this chapter on or before the date payment is due, the department of revenue shall proceed to inform itself as best it may regarding the total gross income of the person from its telephone business within this state during the quarter.

(2) The department shall compute the amount of license taxes due from the person and shall mail to the person a

letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made, ~~within--15 days a lien~~ warrant for distraint may be filed."

Section 26. Section 15-53-113, MCA, is amended to read:

"15-53-113. ~~Lien for collection--of--tax~~ Warrant for distraint. ~~All--tax,--penalty,--and--interest--due--from--any person--under--this--chapter--shall--be--a--lien--upon--all--real property--of--the--person--within--a--county--when--the--department of--revenue--files--in--the--office--of--the--clerk--of--court--of--any county--where--the--real--property--is--situated--a--certified--copy of--its--assessment--letter.~~ If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded ~~and--may be--enforced--in--the--name--of--the--state--of--Montana--in--the--same manner--as--judgment--liens--are--enforced--by--law.~~"

Section 27. Section 15-54-112, MCA, is amended to read:

"15-54-112. Estimation of tax upon failure to file statement -- notice. (1) If a person fails, neglects, or refuses to make and file the statement required by 15-54-103, the department of revenue shall determine as

nearly as possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information that the department may be able to obtain the total gross receipts of the person from the business in this state during the year next preceding April 1.

(2) The department shall prepare a statement showing the amount of the gross receipts and shall compute and assess the amount of license taxes due from the person and shall give notice to the person in the same manner as though the statement had been filed on time and shall proceed to collect the license tax, if delinquent, together with penalty and interest as provided for other delinquencies. The notice shall advise that if payment is not made, the department may file a warrant for distraint."

Section 28. Section 15-54-113, MCA, is amended to read:

"15-54-113. ~~Lien for collection--of--tax~~ Warrant for distraint. ~~All--tax,--penalty,--and--interest--due--from--any person--under--this--chapter--shall--be--a--lien--upon--all--real property--of--the--person--within--a--county--when--the--department of--revenue--files--in--the--office--of--the--clerk--of--court--of--any county--where--the--real--property--is--situated--a--certified--copy of--its--assessment--letter.~~ If all or part of the tax imposed by this chapter is not paid when due, the department may

 SB 272

issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law."

Section 29. Section 15-55-109, MCA, is amended to read:

"15-55-109. Lien for collection of tax Warrant for distraint. All tax, penalty, and interest due from any person under this chapter shall be a lien upon all real property of the person within a county when the department files in the office of the clerk of court of any county where the real property is situated a certified copy of its letter assessing tax, penalty, or interest under this chapter. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law."

Section 30. Section 15-56-112, MCA, is amended to read:

"15-56-112. Estimation of tax upon failure to file return. (1) If a person fails to make the report required by

15-56-103, the department shall determine the value of the property of that person in this state from any information that the department may be able to obtain.

(2) The department shall prepare a statement showing the amount of the valuation determined and shall compute and assess the amount of license taxes due and shall give notice to the person failing to make the report in the same manner as though a report had been filed as required by 15-56-103. The notice shall advise that if payment is not made, the department may file a warrant for distraint."

Section 31. Section 15-56-113, MCA, is amended to read:

"15-56-113. Lien for collection of tax Warrant for distraint. All tax, penalty, and interest due from any person under this chapter shall be a lien upon all real property of the person within a county when the department files in the office of the clerk of court of any county where the real property is situated a certified copy of its assessment letter. If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law."

Section 32. Section 15-58-106, MCA, is amended to read:

"15-58-106. Procedure to determine tax on failure to file statement -- penalty. (1) If any person shall fail, neglect, or refuse to make or file the statement required by 15-58-105 or shall fail to make payment of such license tax within the time therein required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license taxes due from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made ~~within such time~~, a ~~lien~~ warrant for distraint may be filed ~~as set forth in 15-58-107. Upon receipt of said letter, the person shall~~

~~remit to the department within 15 days the full amount of license tax, penalty, and interest due.~~

(4) The 10% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-58-105 is provided to the department."

Section 33. Section 15-58-107, MCA, is amended to read:

"15-58-107. ~~Lien for collection of tax~~ Warrant for distraint. ~~All tax, penalty, and interest due from any person under this chapter shall be a lien upon any and all real property of such person upon the filing of the department of revenue of the duplicate of the statement so made by the department or a certified copy of any statement filed by said department in the office of the county clerk in the county where such real property is situated, which~~ If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien ~~shall have~~ has precedence over any other claim, lien, or demand thereafter filed and recorded ~~and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.~~"

Section 34. Section 15-59-106, MCA, is amended to read:

 SB 272

"15-59-106. Procedure to estimate tax on failure to file statement -- penalty. (1) If any such person shall fail, neglect, or refuse to file any statement required by 15-59-105 within the time required or shall fail to pay the tax required by this part on or before the date such payment is due, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the amounts of the respective articles or products enumerated in 15-59-101(1) and 15-59-102 manufactured or produced by such person within this state or imported by such person into the state during such quarter and during each month thereof and shall determine and fix the amount of the license taxes due to the state from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% a month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made ~~within 15 days, a lien~~

warrant for distraint may be filed ~~as set forth in 15-59-107. Upon receipt of the letter, the person shall remit to the department within 15 days the full amount of license tax, penalty, and interest due.~~

(4) The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-59-105 is provided to the department."

Section 35. Section 15-59-107, MCA, is amended to read:

"15-59-107. ~~Lien for collection of tax~~ Warrant for distraint. ~~All tax, penalty, and interest due from any person under this part is a lien upon any and all real property of such person upon the filing by the department of revenue of a duplicate of the tax assessment statement in the office of the county clerk in the county where such real property is situated.~~ If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien has precedence over any other claim, lien, or demand thereafter filed and recorded ~~and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.~~"

Section 36. Section 15-59-205, MCA, is amended to read:

"15-59-205. Procedure to estimate tax on failure to file -- penalty. (1) If any person shall fail, neglect, or refuse to make or file the statement required by 15-59-204 within the time required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license tax due from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license tax a penalty of 10% of the amount of such license tax plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license tax was due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made ~~within such time,~~ a ~~lien~~ warrant for distraint may be filed ~~as set forth in 15-59-206. Upon receipt of said letter, the person shall remit to the department the full amount of license tax, penalty, and interest due within 15 days.~~

(4) The 10% penalty herein provided may be waived by

the department if reasonable cause for the failure and neglect to file the statement required by 15-59-204 is provided to the department."

Section 37. Section 15-59-206, MCA, is amended to read:

"15-59-206. ~~Lien for collection of tax~~ Warrant for distraint. ~~All tax, penalty, and interest due from any person under this part shall be a lien upon any and all real property of such person upon the filing by the department of revenue of the duplicate of the statement so made by the department or a certified copy of any statement filed by said department in the office of the county clerk in the county where such real property is situated, which~~ If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien ~~shall have~~ has precedence over any other claim, lien, or demand thereafter filed and recorded ~~and which may be enforced in the name of the state in the same manner as judgment liens are enforced by law.~~"

Section 38. Section 15-70-211, MCA, is amended to read:

"15-70-211. ~~Lien for tax and penalties due release~~ Warrant for distraint. ~~(1) All license taxes, penalties, and interest due from any distributor under the provisions of~~

 SB 272

~~this part shall be a lien upon any and all property of such distributor or other person upon the filing by the department of revenue of a copy of its statement or a certified copy of any statement filed with the department in the office of the county clerk of the county where the distributor's property is situated.~~ If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien ~~shall have~~ has precedence over any other claim, lien, or demand filed or recorded thereafter. ~~The lien may be enforced in the name of this state in the same manner as judgment liens are enforced.~~ No action ~~shall~~ may be maintained to enjoin the collection of all or any part of the license tax.

~~(2) When the amount due is paid in full before the entry of foreclosure decree, the state treasurer shall release the lien by filing a written release in the office of the county clerk where the lien was filed. At any time prior to the payment of said taxes, penalty, and interest before the entry of foreclosure decree, the state treasurer may release from the operation of the lien a part of the distributor's property to enable the distributor to mortgage, sell, or otherwise dispose of it in order to procure funds to pay taxes, penalty, and interest, provided there remains in the judgment of the state treasurer sufficient property subject to the lien to ensure the payment of all the unpaid taxes, penalty, and interest.~~"

Section 39. Section 15-70-334, MCA, is amended to read:

"15-70-334. ~~Lien for taxes on property of dealer or user~~ Warrant for distraint. ~~All special fuel taxes due from any dealer or user under the provisions of this part, together with all penalties and interest thereon, shall be a lien upon any and all property of such dealer, user, or other person upon the filing by the department of revenue of a duplicate copy of the statement so made by the department or a certified copy of any statement filed by said department in the office of the county clerk of the county where such property is situated, which~~ If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien ~~shall have~~ has precedence over any other claim, lien, or demand thereafter filed or recorded ~~and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.~~"

Section 40. Section 16-1-409, MCA, is amended to read:

"16-1-409. Failure to make beer tax returns -- penalties. (1) If any brewer or wholesaler subject to the payment of the tax provided for in 16-1-406 through 16-1-408

shall fail, neglect, or refuse to make any return required by this code or shall fail to make payment of such tax within the time herein provided, the department shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and, from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler.

(2) The department shall add to the amount of tax due a penalty of 5% thereof for the first failure, willful neglect, or refusal; 10% for the second; 15% for the third; and 25% for the fourth and each subsequent failure, neglect, or refusal; which shall be in addition to the 5% penalty provided for nonpayment of such tax within the time provided.

(3) Said tax and the penalties added thereto shall bear interest at the rate of 1% per month from the date such returns should have been made and said tax paid.

(4) The department shall then proceed to collect such tax with penalties and interest. Upon request of the department it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax.

~~(5) All taxes due from any brewer or wholesaler under the provisions of this code, together with all penalties and interest thereon, shall be a lien upon any and all property of such brewer or wholesaler upon the filing by the department of a duplicate copy of the statement made by the department or a certified copy of any return filed with the department in the office of the county clerk of the county where such property is situated, which~~ If all or part of the tax imposed upon a brewer or wholesaler by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien ~~shall have~~ has precedence over any other claim, lien, or demand thereafter filed or recorded ~~and may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law.~~

(6) No action shall be maintained to enjoin the collection of such tax or any part thereof. ~~When the amount due the state is paid in full and before the entry of foreclosure decree, the department shall release the lien by filing in the office of the county clerk wherein is filed the lien a written release thereof.~~

~~(7) At any time prior to the payment of said taxes, penalty, and interest, before the entry of foreclosure decree, the department may release from the operation of said lien a part of said property to enable the brewer or~~

 SB 272

~~wholesaler-to-mortgage,-sell,-or-otherwise--dispose--of--the same--in--order--to--procure--funds-with-which-to-pay-taxes, penalty,--and--interest,--provided--there--remains,--in--the judgment--of--the-department,-sufficient-property-subject-to said-lien-to-ensure-the-payment-of-the-whole-of-said--unpaid taxes,-penalty,-and-interest.~~

~~(8)~~(7) Any tax owed by a brewer or wholesaler under this code not paid within the time provided shall be delinquent, and a penalty of 5% shall be added thereto, and the whole thereof shall bear interest at the rate of 1% per month from the date of delinquency until paid. Any brewer or wholesaler who fails, neglects, or refuses to make the return to the department provided for in 16-3-211 or 16-3-231 or refuses to allow such examination as provided for in 16-3-211 or 16-3-231 or fails to make an accurate return according to the manner prescribed shall be deemed guilty of having committed a misdemeanor and upon conviction shall be fined in an amount not exceeding $1,000."

Section 41. Section 40-5-222, MCA, is amended to read:

"40-5-222. Support debt based upon subrogation to or assignment of judgment -- notice -- content -- action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court order. The notice may be served upon the debtor in the

manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within ~~20~~ 30 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any district court order to which the department is subrogated or has an assigned interest;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt.

(3) Action to collect the subrogated or assigned support debt by distraint and seizure and sale shall be lawful after ~~20~~ 30 days from the date of service upon the debtor or ~~20~~ 30 days from the receipt or refusal by the debtor of the notice of debt."

Section 42. Section 40-5-223, MCA, is amended to read:

"40-5-223. Notice of support liability based upon payment of public assistance -- notice -- contents -- collection warrant -- fair hearing. (1) In the absence of a district court order the department may issue a notice of a

support liability accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or children. The notice of liability shall be served upon the responsible parent in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the recipient and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the responsible parent make answer within ~~20~~ 30 days of the date of service to the department stating defenses to liability under 40-5-221;

(e) a statement that if no answer is made on or before ~~20~~ 30 days from the date of the service the support debt shall be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the responsible parent will be subject to distraint and seizure and sale.

(3) If no answer is had by the department to the notice of liability on or before ~~20~~ 30 days of the date of service, the support debt shall be assessed and determined subject to the computation and the department ~~shall~~ may issue a warrant ~~of~~ for distraint authorizing a collection action under this part.

(4) If the responsible parent, within ~~20~~ 30 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under 40-5-221, the responsible parent may receive a fair hearing pursuant to 40-5-226. The decision of the department in the hearing shall establish the obligation of the responsible parent, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt."

Section 43. Section 40-5-224, MCA, is amended to read:

"40-5-224. Finding of support liability based upon payment of public assistance -- warrant of distraint -- bond to release warrant -- action to collect. (1) If the department reasonably believes that the parent is not a resident of this state or is about to move from this state or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the support debt, the department may issue a warrant ~~of~~ for distraint pursuant to

40-5-241 during the pendency of the fair hearing or thereafter, whether or not appealed. No further action may be taken on the warrant until final determination after fair hearing and/or appeal. The department shall in such cases make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The responsible parent may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or thereafter, and in such case warrants issued shall be released. If the decision resulting from the hearing is in favor of the responsible parent, all warrants issued shall be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing."

Section 44. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice and finding of financial responsibility of responsible parent -- administrative procedure. (1) In lieu of the procedures provided in 40-5-223 and 40-5-224, the department may, in the absence of a district court order, serve on the responsible parent a notice and finding of financial responsibility requiring a responsible parent to appear and show cause at a hearing held by the department why the finding of liability and the

amount of support liability should not be finally ordered. This notice and finding shall relate to the support debt accrued or accruing under this part and/or Title 53, chapter 4, including periodic payments to be made in the future for the period of time any child of the responsible parent is in need. The hearing shall be held pursuant to this part and the rules of the department, which shall provide for a fair hearing.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than ~~20~~ 30 days from the date of service to request in writing a hearing, notice of which shall be served upon the department personally or by registered or certified mail. If no request is made, the notice and finding of financial responsibility becomes final. If a request is made, the execution of notice and finding of financial responsibility shall be stayed pending the decision on such hearing or any direct appeal to the courts from the decision.

(3) The notice and finding of financial responsibility shall include:

(a) the amount the department has determined the

responsible parent owes, the support debt accrued or accruing, and, as appropriate, the amount to be paid thereon each month, all computable on the basis of the amount of the monthly public assistance payment previously paid or need alleged and the ability of the responsible parent to pay all or any portion of the debt;

(b) a statement of the name of the recipient or custodian and the name of any child for whom assistance is being paid or need is alleged; or a statement of the amount of periodic future support payments for which financial responsibility is found;

(c) a statement that the responsible parent may object to all or any part of the notice and finding and request a hearing to show cause why he should not be determined to be liable for any or all of the past and future debt determined and the amount to be paid thereon;

(d) a statement that if the responsible parent fails to request a hearing, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed, determined, and ordered by the department and that this debt is subject to collection action;

(e) a statement that the property of the debtor, without further advance notice or hearing, will be subject to distraint and seizure and sale to satisfy the debt."

Section 45. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear -- entry of findings. (1) The administrative hearing is defined as a "contested case".

(2) The administrative hearing may be held in the county of residence or other county convenient to the responsible parent.

(3) If a hearing is requested, it shall be scheduled within 30 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the alleged responsible parent under 40-5-221 and shall also determine the amount of periodic payments to be made to satisfy past, present, or future liability under 40-5-221. In making these determinations, the hearing officer shall include in his consideration the scale of suggested minimum contributions adopted under 40-5-214.

(5) If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed, determined, and subject to collection action. Within ~~20~~ 30 days of entry of the order, the responsible parent may

petition the department to vacate the order upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(6) The hearing officer shall, within 20 days of the hearing, enter findings, conclusions, and a final decision determining liability and responsibility and/or future periodic support payments. The determination of the hearing officer entered pursuant to this section shall be entered as an order unless such findings are set aside pursuant to 40-5-253 and shall limit the support debt under 40-5-221 to the amounts stated in the decision.

(7) The decision establishing liability and future periodic support payments is superseded upon entry of a district court order for support to the extent the district court order is inconsistent with the hearing order or decision. In the absence of a district court order the responsible parent may petition the department for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning party on the nonmoving party in the manner of a summons in a civil action. A hearing shall be set not

less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(8) The department, in its original determinations, and the hearing officer, in making determinations based on objections to original determinations or on petitions to modify, shall consider the standards promulgated for determination of support payments used by the district court of the county of residence of the responsible parent.

(9) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this part without further necessity of action by the hearing officer."

Section 46. Section 40-5-241, MCA, is amended to read:

"40-5-241. Warrant of for distraint ~~---execution. (1) Twenty-one~~ Thirty-one days after receipt or refusal of notice of debt under provisions of 40-5-222 or ~~21~~ 31 days after service of notice of debt or as otherwise appropriate under the provisions of 40-5-223 and 40-5-224, the department may issue ~~an abstract of any final order in the form of~~ a warrant of for distraint ~~under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the support debt within his~~

~~county for the payment of the debt, interest, and cost of executing the warrant and to return the warrant to the department and pay to it the money collected within 60 days from the date of the issuance of the warrant~~ based on the amount of the support debt. The warrant is subject to the provisions of [sections 1, 4, 5, 8, and 9], with references to "tax" taken to mean "support debt" and references to "taxpayer" taken to mean "person owing the support debt", as well as the provisions of this part. Notwithstanding the provisions of [subsection (3) of section 5], an appeal from a hearing may be made directly to district court, as provided in 40-5-253, and is not appealable to the state tax appeal board.

~~(2) The sheriff shall, within 5 days after the receipt of the warrant, file a copy of the warrant with the clerk of the district court of his county and the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the debtor mentioned in the warrant and, in appropriate columns, the amount of the support debt and the date when such copy is filed. The amount of the warrant so docketed is a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. This lien has the same preference against the assets of the debtor as claims for taxes.~~

~~(3) The sheriff shall proceed to levy upon and sell the property of the debtor in the same manner prescribed by law for executions issued against property upon judgments of a court of record and is entitled to the same fees for his services in executing the warrant, to be collected in the same manner.~~

~~(4) If the net proceeds of the sale, upon application to the debt claimed, do not satisfy the debt in full, the department shall have judgment for any deficiency remaining unsatisfied."~~

Section 47. Section 40-5-245, MCA, is amended to read:

"40-5-245. Satisfaction of debt after levy on property -- redemption. Any person owning real property or any interest in real property against which a warrant ~~of~~ for distraint has been issued and levied upon may pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the department. Upon full payment the ~~sheriff shall restore the~~ property shall be restored to him, and all further proceedings on the warrant shall cease. The person shall also have the right within 240 days after sale of property levied upon to redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the courts of this state."

Section 48. Section 40-5-246, MCA, is amended to read:

"40-5-246. Release of distraint and return of seized property -- effect. The department may at any time release a distraint on all or part of the property of the debtor or order the ~~sheriff--to~~ return of seized property without liability, if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the the same or other property."

Section 49. Section 40-5-255, MCA, is amended to read:

"40-5-255. Charging off child support debts as uncollectible. Any support debt due the department from a responsible parent which the department determines uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. In the event a warrant of for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien. At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the debt may be collected. No proceedings or action under the provisions of this part may be begun after expiration of the 6-year

period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant of for distraint filed with the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period."

Section 50. Section 40-5-256, MCA, is amended to read:

"40-5-256. Employee debtor rights protected -- limitation. No employer may discharge or prejudice an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a warrant of for distraint has been served against the employee's earnings. This provision does not apply if more than three warrants are served upon the same employer within any period of 12 consecutive months."

Section 51. Section 69-1-226, MCA, is amended to read:

"69-1-226. Failure to pay fee -- penalty and interest -- collection of fee. (1) If a regulated company or an officer or employee of a regulated company files the statement required by 69-1-223(2) but fails, neglects, or refuses to pay the fee due within the time required, the department of revenue may after the time for payment has expired add to the fee due, in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on

the total amount of the fee and penalty. Interest is computed from the date the fee is due to the date of payment.

(2) The department of revenue shall mail to the regulated company a letter setting forth the amount of the fee, penalty, and interest and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a ~~lien~~ warrant for distraint may be filed.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to make payment is provided to the department."

Section 52. Section 69-1-227, MCA, is amended to read:

"69-1-227. ~~Fee, penalty, and interest as lien~~ Warrant for distraint. ~~The fee, penalty, and interest due from a regulated company are a lien upon all real property of the regulated company within a county when the department of revenue files a certified copy of the amounts due in the office of the clerk of court of the county where the property is located.~~ If the fee imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in [sections 1 through 9]. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded ~~and may be enforced in~~

~~the name of the state of Montana in the same manner as judgment liens are enforced by law.~~"

Section 53. Codification instruction. Sections 1 through 9 are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to sections 1 through 9.

Section 54. Repealer. Sections 15-30-315 and 15-31-527, MCA, are repealed.

-End-

SB 272

STATE OF MONTANA

REQUEST NO. 228-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 27, 19 81, there is hereby submitted a Fiscal Note for SENATE BILL 272 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION

An act to generally revise, clarify and unify the procedures for the issuance of a warrant for distraint by the Department of Revenue.

FISCAL IMPACT

The proposed legislation should have no fiscal impact.

PREPARED BY THE DEPARTMENT OF REVENUE

David M Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-31-81

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 246	1/23/81	2/16/81	2/20/81			2/20/81			
SB 253	1/23/81	2/16/81	2/20/81			2/20/81			
SB 265	1/26/81	2/12/81	2/14/81			2/14/81			
SB 267	1/26/81	2/13/81	2/14/81			2/14/81			
SB 268	1/26/81	2/12/81	2/12/81			2/12/81			
SB 272	1/26/81	2/13/81	2/20/81			2/20/81			
SB 277	1/26/81	2/16/81	2/18/81			2/18/81			
SB 286	1/26/81	1/30/81	2/05/81			2/05/81			
SB 287	1/26/81	2/12/81	2/19/81			2/19/81			
SB 288	1/27/81	2/03/81	2/18/81	2/18/81					
SB 289	1/27/81	2/17/81	2/19/81			2/19/81			
SB 290	1/27/81	2/17/81	2/18/81	2/18/81					
SB 305	1/28/81	2/06/81	2/06/81	2/06/81					
SB 306	1/28/81	2/06/81	2/06/81	2/06/81					
SB 308	1/28/81	2/06/81	2/06/81	2/06/81					
SB 309	1/28/81	2/09/81	2/11/81			2/11/81			

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 13, 1981

The twenty-seventh meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 272:

GENERALLY REVISING THE PROCEDURES FOR THE ISSUANCE OF A WARRANT FOR DISTRAINT BY THE DEPARTMENT OF REVENUE.

This bill was introduced by Senator Mazurek, District 16, Helena, at the request of the Department of Revenue. He turned the presentation over to the drafter of the bill, Larry Weinberg.

Mr. Weinberg presented a written discussion of the bill (marked Exhibit A and attached to these minutes), and stated that the purpose is to make a hearing mandatory after a warrant of distraint has been issued for collection of unpaid taxes. The Department of Revenue considers the bill a mechanism to protect the taxpayer against an unfair tax, while at the same time providing the Department a way of collecting these taxes.

John Alke, representing Montana-Dakota Utilities, said that he objected to the bill in its present form. He feels that because HB 416 has been introduced, in addition to Section 3 of this bill, the Department is trying to secure the ability to immediately seize funds of any person allegedly owing taxes to the State of Montana without first holding a hearing. On behalf of the Montana Bankers Association, Mr. Alke said that the banks are afraid that bank accounts could be seized under the terms of this bill.

Jim Hughes, representing Mountain Bell, agreed with the former opposing testimony.

Mr. Weinberg said that if the withholding tax question is a problem in the bill, the Department of Revenue would work with the committee on correcting it.

Senator Anderson asked how much annual revenue is lost to

the state each year from the individuals and companies who are the target of this bill. Senator O'Hara agreed, and wondered whether, in fact, enough of a problem exists to warrant the bill. Mr. Weinberg stated that contractors are the specific problem.

Senator Mazurek suggested rather than killing the bill, that Mr. Alke work with him and the Department of Revenue to solve existing problems in it. Mr. Alke tentatively agreed to, if HB 416 were dropped.

CONSIDERATION OF SENATE BILL 369:

IMPLEMENTING CONST. AMEND. #9 REGARDING CONFIDENTIALITY OF PROCEEDINGS BEFORE THE JUDICIAL STANDARDS COMMISSION.

Senator Ochsner, District 26, presented the bill on behalf of the court judges, and read the bill aloud. A witness who was supposed to have presented testimony on the bill failed to show up, so Mike Abley, of the Supreme Court, explained that the bill is an attempt to develop a happy medium between current law and the provisions of SB 288.

Senator S. Brown moved that the bill be held to see if the witness would appear later, and that the committee allow him to speak if he arrived. This motion received unanimous acceptance.

CONSIDERATION OF SENATE BILL 267:

REVISING ADOPTION, RELINQUISHMENT AND PLACEMENT OF CHILDREN FOR ADOPTION LAWS.

Senator Mazurek introduced the bill at the request of the Social and Rehabilitation Services. The principal purpose is to get some control over private adoptive placements.

Burt Annin, attorney with the Department of Social and Rehabilitation Services, offered amendments (marked Exhibit B and attached to these minutes).

John Frankino, Director of the Catholic Social Services of Montana, spoke in support of the bill with the amendments.

Randy Gray, representing the Lutheran Social Services of Montana, presented statistics which supported the bill. He said that society's standards have changed greatly so that more unwed mothers are keeping their children; and the resulting shortage of adoptable babies has led to an increase in the "black market" baby problem. He felt that this bill

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 2/13/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: John Alle DATE: 2/13

ADDRESS: 406 Fuller

PHONE: 442-6048

REPRESENTING WHOM? MDU & Mont Bankers Ass

APPEARING ON WHICH PROPOSAL: SB-227

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ~

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

P1

NAME: JAMES R. HUGHES DATE: 2-13-81

ADDRESS: 2020 WINNE HELENA, MONT.

PHONE: 442-8039

REPRESENTING WHOM? MOUNTAIN BELL

APPEARING ON WHICH PROPOSAL: SB 272

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXHIBIT H

DEPARTMENT OF REVENUE
SENATE BILL NUMBER 272

Senate Bill 272 is a substantial revision of the laws relating to the issuance and execution of a warrant for distraint by the Department of Revenue. The warrant for distraint is an existing remedy used by the Department for the collection of unpaid taxes.

At the outset it should be noted that the warrant will not be used with respect to inheritance and estate taxes or to taxes collected at the local level, particularly property taxes.

The purpose of Senate Bill 272 is to provide a uniform method for the issuance and execution of a warrant that is applicable to all taxes (other than inheritance tax and estate tax) administered and collected by the department. The procedure has two basic elements: issuance and execution. Except in special circumstances, at least 60 days must pass from the due date of the tax until a warrant may be issued and prior to execution the opportunity for a hearing with respect to the underlying tax must be available to the taxpayer. Under this procedure, it is possible and will in fact most often be the case that the opportunity for a hearing will precede the issuance of the warrant.

The significance of issuance of the warrant lies in the fact that upon filing the warrant with a clerk of the district court, a lien arises on all real and personal property of the taxpayer in the county wherein the court is located. The resulting tax lien has the effect of a court judgement as far as enforcement is concerned.

At present the warrant mechanism is specifically provided for with respect to personal income tax, corporate license taxes, and child support debts. Additionally, the statutes provide for liens by the filing of various documents for such taxes as the oil and gas severance tax, special fuels tax, etc. These latter liens apply to real property, personal property, or both, depending on the particular tax involved. Several of these liens can be obtained within 15 days of notification of the taxpayer. Moreover there are no provisions relating to prehearing execution. The revision in Senate Bill 272 addresses these differences and attempts to provide a remedy that is fair to the taxpayer and effective for the Department.

Section Analysis

Section 1. New Section. This section defines the warrant for distraint and the amount of the warrant. The warrant when filed is a lien upon all real and personal property of the taxpayer in the county where the lien is filed.

Section 2. New Section. The procedure for issuance of a warrant is developed. The procedure involves two 30-day periods. Thirty days after the due date, the department may issue a notice to the taxpayer that unless payment is received within 30 days of the notice, a warrant may be issued. The 30-day periods may be avoided as provided in Section 3.

Section 3. New Section. This section provides for issuance of a warrant without waiting for either of the 30-day periods referred to in Section 2 to expire in two cases: the jeopardy situation and the trust situation. In the jeopardy situation immediate action may be required to protect the state's interest. In the trust situation, withholding, the taxpayer is holding the money in trust and is subject to greater regulation. Note that utilization of the provisions of Section 3 is discretionary.

Section 4. New Section. Section 4 outlines the procedure for filing a warrant.

Section 5. New Section. This section provides for an opportunity for a hearing prior to execution. The hearing is a contested case proceeding and an appeal from the hearing may be taken to STAB. The hearing must be requested in writing within 30 days of the notice of a right to a hearing. It is important to note that the opportunity for a hearing must occur prior to execution on a filed warrant. The hearing is on the underlying tax liability. The hearing requirement may be satisfied prior to issuance of the warrant, and in fact in most cases this will be the situation. However, should a warrant be issued without an opportunity for a hearing, Section 5 will insure that no action may be taken on the warrant until the opportunity is made available.

Section 6. New Section. The method for execution upon the warrant is outlined. The language is based on existing material in section 15-30-311, M.C.A.

Section 7. New Section. This section, the analog of Section 3 above, provides for pre-hearing execution in the jeopardy and trust situations. When the provisions of Section 7 are used, notice must be given to the taxpayer and a hearing, if requested, must be held as soon as possible.

Section 8. New Section. Section 8 details the provisions for full or partial release of the lien.

Section 9. New Section. It is made clear that the warrant for distraint is not exclusive, and the Department may use other remedies for the collection of unpaid taxes. Such a remedy would be a suit in district court. A civil action might be desireable when an out-of-state taxpayer is involved, and the Department will have to enforce the judgement in a foreign jurisdiction.

Section 10. Amends 15-30-208, M.C.A. This section is rewritten to tie the warrant procedure for withholding taxes to the general provisions in Sections 1 through 9.

Section 11. Amends 15-30-226, M.C.A. The language dealing with warrants is deleted as unnecessary in view of the new sections.

Section 12. Amends 15-30-311, M.C.A. This section, which is the general warrant section for individual income tax, is reqritten to mesh with the new sections.

Section 13. Amends 15-30-312, M.C.A. On page 10, lines 8 and 9, language is added to tie this section to the provisions of the new sections. Section 15-30-312, M.C.A., deals with jeopardy assessments.

Section 14. Amends 15-31-406, M.C.A. Section 15-31-527, M.C.A., is proposed for repeal by Senate Bill 272 (see Section 54), and consequently a reference to 15-31-527, M.C.A., on page 10, line 21, must be deleted.

Section 15. Amends 15-31-525, M.C.A. This section is extensively amended to tie it to the new sections.

Section 16. Amends 15-35-105, M.C.A. This section relates to the coal severance tax. The issuance of a warrant would be subject to the provisions of Sections 1 through 9.

Section 17. Amends 15-36-107, M.C.A. This section relates to the oil and gas severance tax. It is amended for consistency with the new provisions.

Section 18. Amends 15-36-108, M.C.A. This section also relates to the oil and gas severance tax, and it too is rewritten to tie it to the provisions of the new section.

Section 19. Amends 15-37-107, M.C.A. This section relates to the tax on metalliferous mines and is rewritten to tie the language to the provisions of the new sections.

Section 20. Amends 15-37-206, M.C.A. This section deals with micaceous mineral mines and is rewritten to tie it to the new sections.

Section 21. Amends 15-38-107, M.C.A. This section and the next relate to the resource indemnity trust tax. The section is amended for consistency with the new provisions.

Section 22. Amends 15-38-108, M.C.A. This section is rewritten to tie the language to that found in the new sections.

Section 23. Amends 15-51-111, M.C.A. This section is concerned with the electric energy producers' license tax. The section is rewritten for consistency with the new sections.

Section 24. Amends 15-51-112, M.C.A. Section 15-51-112, M.C.A., also relates to the elctric energy producers' license tax. The section is amended to tie it to the new sections.

Section 25. Amends 15-53-112, M.C.A. Section 15-53-112, M.C.A., is concerned with the telephone company license tax. The section is changed for consistency with the new sections.

Section 26. Amends 15-53-113, M.C.A. The amendments to this section, which also deals with the telephone company license tax, tie the section to the new sections.

Section 27. Amends 15-54-112, M.C.A. This section, dealing with the express company license tax, is amended for consistency with the new sections.

Section 28. Amends 15-54-113, M.C.A. Section 15-54-113, M.C.A., relating to the express company license tax, is amended to tie the language to that used in the new sections.

Section 29. Amends 15-55-109, M.C.A. This section, concerning the freight line company license tax, is amended to tie it to the new provisions.

Section 30. Amends 15-56-112, M.C.A. This section and the next deal with the sleeping car company license tax. The section is changed for consistency with the new sections.

Section 31. Amends 15-56-113, M.C.A. Section 15-56-113, M.C.A., is rewritten to tie it to the provisions of the new sections.

Section 32. Amends 15-58-106, M.C.A. Relating to the coal retailer's license tax, this section is amended for consistency with the new sections.

Section 33. Amends 15-58-107, M.C.A. This section, also dealing with the coal retailer's license tax, is revised to tie it to the new sections.

Section 34. Amends 15-59-106, M.C.A. This section, which relates to the tax on cement and gypsum producers, is rewritten for consistency with the new material.

Section 35. Amends 15-59-107, M.C.A. Also relating to the tax on cement and gypsum producers, section 15-59-107, M.C.A., is reworded to relate to the provisions of the new sections.

Section 36. Amends 15-59-205, M.C.A. Section 15-59-205, M.C.A., is amended for consistency with the new material. This section, as well as the next, is concerned with the tax on cement dealers.

Section 37. Amends 15-59-206, M.C.A. This section is revised to tie it to the new sections.

Section 38. Amends 15-70-211, M.C.A. This section, dealing with the gasoline tax, is extensively rewritten to tie it to the provisions found in Sections 1 through 9 of Senate Bill 272.

Section 39. Amends 15-70-334, M.C.A. Dealing with the special fuels use tax, this section is also extensively reworded to tie it to the new material.

Section 40. Amends 16-1-409, M.C.A. This section, relating to the beer tax, is rewritten to tie the language to that found in the new sections.

Section 41. Amends 40-5-222, M.C.A. This section and sections 42 through 50 relate to child support. The child support laws already contain the warrant mechanism and the amendments tie the existing language to the new provisions. Various 20-day periods are changed to 30-day periods for consistency.

Section 42. Amends 40-5-223, M.C.A. Please see the comments to section 41.

Section 43. Amends 40-5-224, M.C.A. Please see the comments to section 41.

Section 44. Amends 40-5-225, M.C.A. Please see the comments to section 41.

Section 45. Amends 40-5-226, M.C.A. Please see the comments to section 41.

Section 46. Amends 40-5-241, M.C.A. This section is extensively rewritten to coordinate with the new material.

Section 47. Amends 40-5-245, M.C.A. Please see the comments to section 41.

Section 48. Amends 40-5-246, M.C.A. Please see the comments on section 41.

Section 49. Amends 40-5-255, M.C.A. Please see the comments to section 41.

Section 50. Amends 40-5-226, M.C.A. Please see the comments to section 41.

Section 51. Amends 69-1-226, M.C.A. This section relates to the consumer counsel tax and is rewritten for consistency with the new material.

Section 52. Amends 69-1-227, M.C.A. This section, relating also to the consumer counsel tax, is amended to tie the language to that employed in the new material.

Section 53. Codification instruction.

Section 54. Repealers. This section repeals sections 15-30-315, M.C.A., and 15-31-527, M.C.A. The sections are rendered redundant by the new provisions. The text of the repealed material is as follows:

15-30-315. Release of lien or partial discharge of property. (1) The department shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The department may issue a certificate of release if it determines that the lien is unenforceable.

(2) The department may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter if:

(a) it finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which have priority to such lien;

(b) there is paid to the state treasurer in part satisfaction of the liability secured by the lien an amount which shall not be less than the value, as determined by the department, of the interest of the state of Montana in the part to be discharged; or

(c) the department determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 130, L. 1965; amd. Sec. 193, Ch. 516, L. 1973; R.C.M. 1947, 84-4958.

15-31-527. Release of tax liens. (1) The department of revenue shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The department may issue a certificate of release if it determines that the lien is unenforceable.

(2) The department may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter if:

(a) it finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which may have priority to such lien;

(b) there is paid to the state treasurer in part satisfaction of the liability secured by the lien an amount which shall not be less than the value, as determined by the department, of the interest of the state in the part to be discharged; or

(c) the department determines at any time that the interest of the state in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 53, L. 1967; amd. Sec. 57, Ch. 516, L. 1973; R.C.M. 1947, 84-1505.1.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 20, 1981

The thirty-third meeting of the Senate Judiciary Committee was called to order by Jess O'Hara, Vice Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 272:

Senator Mazurek moved that the bill be amended according to the attached Committee Report. His motion carried unanimously. He then moved that the bill DO PASS AS AMENDED, and this motion carried unanimously.

DISPOSITION OF SENATE BILL 246:

Senator Mazurek moved to amend the bill as shown on the attached Committee Report, and his motion carried unanimously. Senator Olson moved that the bill DO PASS AS AMENDED, and this motion carried unanimously.

DISPOSITION OF SENATE BILL 253:

Senator Mazurek moved that the bill be amended as shown on the attached Committee Report. His motion carried over Senator Olson's opposition. Senator Berg moved that the bill DO PASS AS AMENDED, and this motion carried with Senator Olson opposing.

DISPOSITION OF SENATE BILL 240:

David Niss outlined the areas of the bill in which he felt there were problems and conflicts. Following discussion on the points he raised, Senator Olson moved that the bill receive a DO PASS AS AMENDED, with David doing the amending. Senator Anderson made a substitute motion that the bill do pass as amended, with David Niss working with Senators Mazurek and Anderson on the amendments. This motion passed unanimously. Senator Berg then moved that this action be reconsidered in order to consider the two amendments presented by the State Insurance Department. His motion passed unanimously. Senator Berg moved adoption of the two amendments, and this motion passed unanimously. Senator Olson then moved that the bill do pass as amended, and his motion passed over Senator Mazurek's objection.

STANDING COMMITTEE REPORT

February 20, 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 272

Respectfully report as follows: That SENATE Bill No. 272

be amended as follows:

1. Page 5, line 7.
Following: "if"
Strike: ":"

2. Page 5, line 8.
Following: line 7
Strike: "(a)"

3. Page 5, lines 10 through 12.
Following: "requirement" on line 10
Strike: line 10 through line 12

And, as so amended,
DO PASS.

Mike Anderson Chairman.

STATE PUB. CO.
Helena, Mont.

JUDICIARY COMMITTEE

47 Legislature

SENATE BILLS

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
219	Amending 46-18-201 to generally revise sentencing laws.	3/2/81	Towe	3/23/81	Do Pass as Amended 3/26/81	3/26/81
238	Providing court costs and attorney fees to a successful plaintiff in action involving vehicle ownership, use-etc.	3/2/81	Story	3/20/81	Do Pass as Amended 3/25/81	3/25/81
240	Establishing standards for collection, use and disclosure of information gathered in insurance transactions.	3/2/81	Hazelbaker	3/20/81	Do Pass as Amended 3/24/81	3/24/81
246	Requiring replacement value of a motor vehicle to be the measure of damages.	3/2/81	Story	3/19/81	Do Pass 3/26/81	3/26/81
253	To amend the laws relating to child abuse/neglect and protective services.	3/2/81	Regan	3/20/81	Do Pass as Amended 3/27/81	3/27/81
272	Generally revising the procedures for the issuance of a warrant for distraint by the Department of Revenue.	3/2/81	Mazurek	3/23/81	Do Pass As Amended 3/28/81	3/28/81

There may be a real disagreement as to which sentence will apply. Under those circumstances the state should have the right to appeal.

REP. YARDLEY felt the bill was not giving the supreme court guidelines.

REP. EUDAILY asked if the supreme court would come up with a list that was not in the statutes. SENATOR TOWE stated the list would be published. A statement of intent is not necessary.

REP. KEYSER asked who made the laws concerning all the sentences within title 45. The answer was the legislature has over the years. Existing law will continue. It will be refined with a presumptive sentence. The judges are willing to implement this.

SENATE BILL 272 SENATOR MAZUREK, chief sponsor, stated this bill would generally revise the procedures for the issuance of a warrant for distraint by the Department of Revenue. This bill was requested by the Department of Revenue. This would unify the procedure for collecting taxes such as inheritance and estate taxes.

When a warrant of distraint is issued it is from the Department of Revenue to the sheriff to collect the tax. It becomes a lien against the property. If it is not paid after 30 days of the due date the warrant is issued. This is an attempt to bring uniform standards to the collection of taxes. It is basically a clean-up bill and it makes the process more orderly.

LARRY WEINBERG, Department of Revenue, was in support of the bill. EXHIBIT 3. The procedures will not apply to inheritance, estate or local taxes. The department does the collection work for only certain taxes and does not get involved with local taxes.

The warrant is filed with the clerk of the district court. The judge would inform the sheriff to collect the tax. Child support would be included. This would also give an opportunity for a hearing. In 1978 850 warrants were issued. In 1979 2,476 were issued and in 1980 a total of 2,749 were issued. If this is used and a person felt that the taxes assessed were unfair they could ask for a refund.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. CURTISS asked if the department is being challenged because of not having an administrative hearing. WEINBERG stated there is only one case he knows of. REP. CURTISS asked if the language in the warrants state that the person must reply and request a hearing. WEINBERG replied as it is written now, opportunity has to be given for a hearing. In normal cases the person receives a statement saying how much money is owed and how much interest is due. It also states that a hearing should be made and it must be requested. REP. CURTISS asked about the emergency clause. WEINBERG stated that is not used very often. If the department has notice that a taxpayer is observed leaving the state they might investigate it.

REP. TEAGUE felt this would be using the hearing process and jumping over the court process. WEINBERG stated no - the taxpayer has various options available. He could pay the tax and apply for a refund, not pay the tax and have the department go after him, or go to court after paying the tax.

REP. TEAGUE asked about the hearings. WEINBERG stated conferences are at field offices throughout the state. The problem would hopefully be resolved there. If it came to a formal hearing it would be in Helena. A lot of the disputes are cleared up over the phone or at the field office. There are not very many disputes as compared to the number of taxpayers.

REP. KEEDY asked about the warrant for distraint on page 7. WEINBERG stated it should be sections 1-9 instead of 4-9.

REP. KEYSER asked if the state treasurer could release by statute a lien if partial payment was made. WEINBERG felt the department is charged with releasing the liens.

REP. TEAGUE asked what time period determines a tax is delinquent. Sixty days after the tax is due a warrant for distraint is issued.

The meeting adjourned at 11:00 a.m.

KERRY KEYSER, CHAIRMAN

mr

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 28, 1981

The executive session of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Matsko, who was absent. Jim Lear, Legislative Council, was present.

SENATE JOINT RESOLUTION 4 REP. CURTISS moved do pass.

REP. CURTISS felt many groups delay energy projects frivolously.

REP. SHELDEN made a substitute motion of do not pass. He felt this would make certain groups a different class of citizens. He stated the bill was out of order and unAmerican. It would make a laughing stock out of the Montana legislature. REP. CONN supported the motion. It would not be right to give congress the power to do this by just handing it over to them and telling them to do something.

The motion of do not pass resulted in a roll call vote. Those voting yes were: CONN, IVERSON, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, HANNAH, MCLANE and DAILY. The motion tied 7 to 7.

REP. BROWN moved to table the bill. A roll call vote resulted. Those voting yes were: CONN, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MCLANE, and DAILY. The motion to table the bill failed 8 to 6.

The discussion went back to the original motion of do pass. A roll call vote resulted. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MCLANE, and DAILY. Those voting no were: CONN, IVERSON, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. The motion of do pass carried 8 to 7.

REP. CURTISS was assigned to carry the bill on the House Floor.

SENATE BILL 272 REP. DAILY moved do pass.

REP. HANNAH could not support the bill. If payment is not made a warrant may be filed. The system is not working.

REP. KEEDY moved to insert "the" on line 19 and 22 following "collect" and to insert "or agent" on line 25 following "sheriff" on page 4. On page 7, line 3 strike "4" and insert "1". The amendment carried.

REP. CURTISS wondered if the provision for a lien has priority over other liens at banks. This could be a period of time, like 30 days.

Under present law a person can pay interest on that and not pay all of it. Here if any portion is not due it is wrong. REP. CURTISS felt it was remiss to give them this opportunity.

REP. KEEDY stated there were 7,000 delinquent taxes statewide. An order of distraint is made when tax is due and not paid. This is not quite as automatic as it is made out to be.

REP. EUDAILY said the amount of delinquent taxes on the books presently is a problem. All areas of government depend on the taxes that come in and they cannot operate without them. There was a special effort this fall to collect taxes in Missoula.

REP. HANNAH made a substitute motion of do not pass. He felt this would force the taxpayer to come to Helena and argue their side of the matter as to why a tax is not appropriate.

REP. KEYSER stated the taxpayer has a petition break under this language that would enable them to appeal the process.

REP. YARDLEY was against the motion. The department would not handle local or inheritance taxes.

Some people are always delinquent on taxes, stated REP. CONN. They should have a right to request a hearing.

Also speaking against the motion was REP. SHELDEN. This was amended because the department would thus be able to apprehend people who could reasonably be expected to leave the state without paying their taxes. This builds in a safeguard.

REP. CURTISS was opposed to the bill. She stated 142 people were called in for audit all because the woman who prepared their taxes was not certified by the department. The woman was not allowed to be at the hearings to explain why the taxes were figured as they were. REP. CURTISS stated this was the type of situation that goes on in the administration of the department. She urged the committee to vote do not pass.

The motion of do not pass failed with TEAGUE, CURTISS, MCLANE and HANNAH voting for the motion. REP. ANDERSON moved to reverse the vote to do pass as amended. The motion carried with TEAGUE, CURTISS, MCLANE and HANNAH voting against the motion. REP. YARDLEY was assigned to carry the bill on the House Floor.

SENATE JOINT RESOLUTION 4 REP. ANDERSON moved to reconsider the committee's action on Senate Joint Resolution 4. He stated that some of the representatives were at another meeting and they would like to have the opportunity to vote on the issue. The motion